

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D&Z AUCTION RESELLERS, LLC, AND)	
GUSTAVO A MORENO-PONCE,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION
)	NO. 3:19-cv-01242-WGY
MEDI DATA CORPORATION, GENARO)	
DURAN, LUIS DURAN-RIVERA,)	
MICRO MERCHANT SYSTEMS,)	
NUESTRA FARMICIA SAN FRANCISCO, LLC,)	
SUPER FARMACIA REBECA, SUPER)	
FARMACIA FAMILIAR,)	
FARMACIA JIREH, INC., FARMACIA LA)	
NUEVA BARCELONETA, FARMACIA)	
CUQUIMAR, FARMACIA DORADO,)	
EMPRESAS ALVASIE, INC.,)	
FARMACIA SAN ANTONIO, FARMACIA)	
LOS ANGELES, INC., FARMACIA ORTEGA,)	
FARMACIA ISLOTE DRUG,)	
ESTEVEZ EXPRESS PHARMACY,)	
FARMACIA MALEZA EXPRESS,)	
FARMACIA MARILYN, AND)	
SUPER FARMACIA SAN FRANCISCO, LLC,)	
)	
Defendants.)	

YOUNG, D.J.¹

January 19, 2021

ORDER

On November 17, 2020, this Court held a hearing and ALLOWED in part the motions to dismiss of defendants Farmacia Cuquimar, Farmacia Los Angeles, Inc., Farmacia Islote Drug, Farmacia

¹ Of the District of Massachusetts, sitting by designation.

Dorado (ECF No. 78), and Micro Merchant Systems, Inc. ("MMS") (ECF Nos. 75) ("the original motions to dismiss"), dismissing plaintiffs D&Z Auction Resellers, LLC, and Gustavo A Moreno-Ponce's Second Cause of Action (Circumvention of Technological Measures) of the Amended Complaint, ECF No. 106, and took the motions under advisement as to the First Cause of Action (Copyright Infringement).² Nuestra Farmacia San Francisco, LLC, Esteves Express Pharmacy, Farmacia Maleza Express, Farmacia Ortega, Super Farmacia Familiar, Super Farmacia Rebeca, Empresas Alvasie, Inc., Farmacia Jireh, Inc., Farmacia Marilyn, Luis Duran-Rivera and Genaro Durán-Vélez filed motions to join the motions to dismiss. See ECF Nos. 131, 133, 134, and 135. The motions for joinder were allowed on December 7, 2020, and the motions to join were allowed to the same extent as the original motions to dismiss. See ECF Nos. 143 and 144.³ Accordingly, the Second Cause of Action of the Amended Complaint is DISMISSED as to all defendants.

² The Court also allowed MMS's motion to dismiss the crossclaims, ECF No. 82, and allowed without prejudice defendant Virna L. Martínez d/b/a Farmacia Campo Alegre motion to dismiss for insufficient service of process, ECF No. 62, with leave to serve within 30 days.

³ The Court intended to dismiss only the Second Cause of Action, but inadvertently dismissed the case as to Farmacia Marilyn, Luis Duran-Rivera and Genaro Durán-Vélez. Plaintiffs are correct in raising this issue, ECF No. 146, and the Court clarifies its intention and order as to these defendants.

After careful consideration of the parties' submissions, the Court DENIES all of the motions to dismiss as to the First Cause of Action of the Amended Complaint, ECF Nos. 75, 78, 131, 133, 134, 135, 137, 139⁴ and 142.

SO ORDERED.

/s/ William G. Young
WILLIAM G. YOUNG
DISTRICT JUDGE

⁴ The Court observes that the plaintiffs did not file an opposition to Nuestra Farmacia San Francisco's motion to dismiss, ECF No. 139, but the Court is not required to grant the motion for a procedural defalcation. See Nieves Floran v. Doctors' Ctr. Hosp., Inc., CV 16-1930 (BJM), 2020 WL 716669, at *3 (D.P.R. Feb. 12, 2020) (citing Pomerleau v. W. Springfield Pub. Schools, 362 F.3d 143, 145 (1st Cir. 2004)).